

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

NICHOLAS S.

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2011020932

**DECISION**

Administrative Law Judge Robert Walker, State of California, Office of Administrative Hearings, heard this matter in San Bernardino, California, on May 17, 2011.

Jennifer Cummings, Program Manager for Fair Hearings and Legal Affairs for Inland Regional Center, represented the regional center.

Lisa S., claimant's mother, represented the claimant, Nicholas S.

The matter was submitted on May 17, 2011.

**ISSUE AND SUMMARY**

Is claimant entitled to have a stair rail lift installed in his home?

In this decision, it is determined that claimant is entitled to a stair rail lift.

## FACTUAL FINDINGS

### *BACKGROUND*

1. Claimant is an eight-year-old boy. He has been diagnosed with moderate mental retardation and cerebral palsy. He is a regional center consumer.

2. Claimant lives with his mother, Ms. S., and his ten-year-old sister. Claimant's parents are divorced. He and his sister spend three weekends each month with their father.

3. Claimant is non-ambulatory. He does not stand or walk independently. He uses a wheelchair and can get out of the wheelchair to sit on the floor without help. He cannot get into the wheelchair on his own; he must be lifted into it.

4. Claimant has had some behavior problems. In 2007, he was scratching his mother and sister and pulling their hair. His mother testified that he no longer does those things. He has run into people with his wheelchair. When he is left in his wheelchair for long periods without attention, he rocks his wheelchair back and forth. Ms. S. testified that he has done that at school and at his father's home. She said he does not do that when she is caring for him because she provides him with whatever attention he needs.

5. The regional center arranged to have a behaviorist use behavior modification techniques to cause claimant to be more compliant with his mother's directions. Eliana Lois, M.D., is chief of medical services at the regional center. Dr. Lois testified that, in children, behavior modification usually requires months and generally cannot be successful unless parents and other care givers reinforce the behaviorist's work. Dr. Lois said that, generally, not much can be accomplished within just a few weeks. When the behaviorist came to work with claimant, Ms. S. was not supportive. She testified that the behaviorist stayed for only 30 minutes and did not do anything she, Ms. S., could not do. After three sessions, Ms. S. told the behaviorist not to come back.

### *The Request for a Stair Rail Lift*

6. The family lives in a very small condominium, which Ms. S. owns. The first floor has a living area and kitchen. The second floor has a bathroom and bedrooms. There is no bathroom or bedroom on the first floor, and the condominium cannot be modified to add either of those to the first floor. The floors are connected by stairs.

7. Claimant can go up and down the stairs, and he occasionally does. He crawls up. To come down, he sits down and scoots from one stair to the next. Claimant will go up or down the stairs only if he wants to move from one floor to the other. For example, occasionally when his sister is on a different level from the one he is on and he wants to be with her, he will go up or down. He, however, does this only once or twice a month. He will not go up or down on his mother's request. If she asks him to go upstairs to go to the

bathroom, he refuses. If she asks him to go upstairs to go to bed, he refuses. Ms. S. must carry him.

8. Claimant is almost four feet tall. Ms. S. testified that he weighs 85 pounds. Ms. S. is a woman of average size and appears to be of average strength. She testified that it is difficult for her to carry claimant and that, when she does, she has a pain in her side. Claimant attended the hearing in this matter. After observing him and his mother, it is easy to believe that it is very difficult for her to carry him up and down stairs. Also, as the months pass, it will become more and more difficult, and at some point, it will become impossible.

9. It would be good if claimant could live in a single story home. Ms. S. testified that she could not possibly afford to buy a different home.

10. Ms. S. asked regional center to buy a stair rail lift for claimant. Such lifts often are used for people who cannot go up or down stairs or who can do that only with great difficulty. A rail is attached to a wall beside a flight of stairs. A seat with a seatbelt attaches to the rail, and a motor under the seat propels it along the rail. The cost, including installation, would be approximately \$3,000.

11. Ms. S. would have to lift claimant onto and off of the seat. The seatbelt would help to secure him, but Ms. S. probably would need to walk along and provide added support.

#### *The Regional Center Denied the Request*

12. Michelle Knighten is a physical therapist with the regional center. In November of 2010, Ms. Knighten went to claimant's home to evaluate the appropriateness of a stair rail lift for claimant. She concluded that claimant's physical ability was such that a stair rail lift was not warranted. She concluded that the problem was not with claimant's physical ability but with his motivation. Ms. Knighten wrote a report in which she concluded that there are several things claimant's mother can try in order to motivate claimant to go up and down stairs on command. While she wrote that there are several things to be tried, she listed only two. Ms. Knighten suggested that claimant's mother might motivate him with a favorite toy. Apparently the thought was that claimant's mother might place claimant's favorite toy at the top of the stairs and hope he would be motivated to crawl up the stairs to get it. Ms. Knighten also suggested behavior modification.

13. In Ms. Knighten's report, she did not mention that it might be unsafe for claimant to use a stair rail lift. At the hearing, however, Ms. Knighten testified that the main reason the regional center decided not to provide claimant with the lift was that it would be unsafe. She said she had spoken with a representative of a company that manufactures lifts and asked whether a lift would be safe for someone who rocks back and forth. Ms. Knighten testified that the person with whom she talked said, "It might be a problem."

14. Dr. Lois testified that there are two reasons the regional center should not purchase a stair rail lift for claimant. First, there is no medical necessity for a lift because the problem is with claimant's motivation and not with his physical ability. Dr. Lois testified that the second reason is the main concern, and that has to do with safety. She said there are two reasons a lift would be unsafe for claimant. He might rock back and forth and cause the seat to become disconnected from the rail. Also, when his mother was lifting him onto or off of the seat at the top of the stairs, he might fall and roll down the stairs.

#### *Claimant's Mother's Testimony*

15. Ms. S. emphasized that claimant does not rock back and forth in his wheelchair when she is caring for him. She pointed out that he has not rocked in his wheelchair during the hearing. Indeed, during the two-hour hearing, claimant was well behaved. He played with a toy, but other than doing that, he moved very little.

16. Ms. S. contends that her carrying claimant up and down stairs presents more of a safety risk than a stair rail lift would present.

#### *Prescriptions*

17. Susan Biegel, M.D., is Ms. S.'s physician. Dr. Biegel wrote a prescription dated March 16, 2011, in which she said she recommended a lift because it is very difficult for Ms. S. to carry her son up and down stairs.

18. David Michelson, M.D., is claimant's neurologist. He wrote a prescription dated March 25, 2011, for a "powered chair lift."

19. As Dr. Lois pointed out, it is not known whether Dr. Biegel or Dr. Michelson considered either safety concerns or alternative solutions.

#### *Findings Regarding Safety and Medical Necessity*

20. It simply is not acceptable for claimant's mother to have to carry a four-foot-tall, 85-pound child up and down stairs.

21. It is found that there is a medical necessity for a lift. Lack of motivation is not the only cause of Claimant's not going up and down stairs on command. It may be true that, but for a lack of motivation, he would go up and down the stairs. However, if he were of average intelligence and if he could walk, he probably would go up stairs when he needed to use the bathroom and when it was time to go to bed. His refusal to go upstairs when asked is a result of a combination of lack of motivation, his physical condition, and his mental condition. If he were going up and down frequently whenever he was motivated, it would be easier to conclude that lack of motivation was the only problem. But he goes up or down only once or twice a month. Moreover, medical necessity is not the only ground for entitlement.

22. Also, if claimant's lack of motivation could be corrected fairly quickly, it would not be appropriate for the regional center to spend \$3,000 on a lift. But Dr. Lois testified that, in children, behavior modification usually takes months. It also is the case that behaviorists are not always successful in modifying a child's behavior.

23. Ms. S.'s contention that her carrying claimant presents more of a risk than a lift would present rings true. It is not safe for a woman of average size and strength to be carrying a child of claimant's size up and down stairs, and as claimant grows, it will become more and more unsafe.

24. Ms. S. testified that when claimant is under her care, he does not rock back and forth, and her testimony in that regard was not contradicted. Moreover, claimant's behavior in the hearing was consistent with that testimony. Dr. Lois raised a very good point regarding safety at the top of the stairs, but that matter can be dealt with by installation of a gate. A gate can be positioned so that, when Ms. S. is lifting claimant on or off of the seat at the top of the stairs, the gate will prevent him from falling down the stairs.

25. It is found that there is a medical necessity for a lift. It is further found that the safety issue can be addressed with a gate.

## THE LAW REGARDING ENTITLEMENT

1. The Lanterman Disabilities and Services Act, beginning at section 4500 of the Welfare and Institutions Code, contains a number of provisions relevant to entitlement to services and supports.

2. The State has accepted a responsibility for persons with developmental disabilities and an obligation to them.

4501 The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge.

¶ . . . ¶

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life.

¶ . . . ¶

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas. These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living.... In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way in which they spend their time, including education, employment, and leisure, the pursuit of their own personal future, and program planning and implementation.

¶ . . . ¶

It is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served.<sup>1</sup>

3. The Lanterman Act is replete with provisions that elaborate on the nature of the services and supports to which developmentally disabled persons are entitled.

4502 Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals . . .

¶ . . . ¶

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

(a) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward

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<sup>1</sup> Welf. & Inst. Code, § 4501.

the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.

(b) A right to dignity, privacy, and humane care. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.

(c) A right to participate in an appropriate program of publicly supported education, regardless of degree of disability.

(d) A right to prompt medical care and treatment.

(e) A right to religious freedom and practice.

(f) A right to social interaction and participation in community activities.

(g) A right to physical exercise and recreational opportunities.

(h) A right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect.

(i) A right to be free from hazardous procedures.

(j) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.<sup>2</sup>

4502.1 The right of individuals with developmental disabilities to make choices in their own lives requires that all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers or, where appropriate, their parents, legal guardian,

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<sup>2</sup> *Id.* at § 4502.

or conservator. Those public or private agencies shall provide consumers with opportunities to exercise decision-making skills in any aspect of day-to-day living . . . .<sup>3</sup>

4512. (b) “Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies; advocacy assistance, including self-advocacy training, facilitation and peer advocates; assessment; assistance in locating a home; child care; behavior training and behavior modification programs; camping; community integration services; community support; daily living skills training; emergency and crisis intervention; facilitating circles of support; habilitation; homemaker services; infant stimulation programs; paid roommates; paid neighbors; respite; short-term out-of-home care; social skills training; specialized medical and dental care; supported living arrangements; technical and financial assistance; travel training; training for parents of children with developmental disabilities; training for parents with developmental disabilities; vouchers; and transportation services

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<sup>3</sup> *Id.* at § 4502.1.



necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.<sup>4</sup>

4620. (a) In order for the state to carry out many of its responsibilities as established in this division, the state shall contract with appropriate agencies to provide fixed points of contact in the community for persons with developmental disabilities and their families, to the end that these persons may have access to the services and supports best suited to them throughout their lifetime.

¶ . . . ¶

(b) The Legislature finds that the service provided to individuals and their families by regional centers is of such a special and unique nature that it cannot be satisfactorily provided by state agencies. Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers.<sup>5</sup>

4640.6(a) In approving regional center contracts, DDS shall ensure that regional center staffing patterns demonstrate that direct service coordination are the highest priority.

¶ . . . ¶

(d) For purposes of this section, “service coordinator” means a regional center employee whose primary responsibility includes preparing, implementing, and monitoring consumers' individual program plans, securing and coordinating consumer services and supports, and providing placement and monitoring activities.<sup>6</sup>

¶ . . . ¶

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<sup>4</sup> *Id.* at § 4512, subd. (b).

<sup>5</sup> *Id.* at § 4620.

<sup>6</sup> *Id.* at § 4640.6.

4640.7(a) It is the intent of the Legislature that regional centers assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.<sup>7</sup>

4646 (a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.<sup>8</sup>

4648 In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including , but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. Regional center *shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan . . . .* (Italics added.)

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

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<sup>7</sup> *Id.* at § 4640.7, subd. (a)

<sup>8</sup> *Id.* at § 4646, subd. (a).

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which regional center and consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.<sup>9</sup>

4685. (a) Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically equal to or lower than the cost of providing out-of-home placement.<sup>10</sup>

¶ . . . ¶

(b) It is the intent of the Legislature that regional centers provide or secure family support services that . . . [are] flexible and creative in meeting the unique and individual needs of families as they evolve over time.<sup>11</sup>

(c)(2) When children with developmental disabilities live with their families, the individual program plan shall include a family plan component which describes those services and supports necessary to successfully maintain the child at home. Regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child, before considering out-of-home placement alternatives.<sup>12</sup>

4. The Lanterman Act is an entitlement act. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The people who qualify under it are entitled to services and supports. Services and supports should be available to enable them to approximate the pattern of everyday living available to people without

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<sup>9</sup> *Id.* at § 4648, subd. (a).

<sup>10</sup> *Id.* at § 4685, subd. (a).

<sup>11</sup> *Id.* at § 4685, subd. (b)(2).

<sup>12</sup> *Id.* at § 4685, subd. (c)(2).

disabilities. Services and supports should be directed toward helping them achieve the most independent and normal lives possible. People have a right to dignity and privacy. Services and supports, when possible, should be provided in natural settings. People have a right to make choices in their own lives concerning where they live. Regional centers should assist people in securing those services and supports that maximize choices for living. Services and supports should assist people in achieving the greatest self-sufficiency possible and in exercising personal choices

5. In *Williams v. Macomber*<sup>13</sup> the court of appeal addressed the Lanterman Act and said:

“In order for the state to carry out many of its responsibilities as established in this division,” the Act directs the State Department of Developmental Services to contract with “appropriate private nonprofit corporations for the establishment of a “network of regional centers.” (§§ 4620, 4621.) Regional centers are authorized to “[p]urchase ... needed services ... which regional center determines will best” satisfy the consumer's needs. (§ 4648.) The Act declares: “It is the intent of the Legislature to encourage regional centers to find innovative and economical methods” of serving their consumers. (§ 4651.) The Act directs that: “A regional center shall investigate every appropriate and economically feasible alternative for care of a developmentally disabled person available within the region. (§ 4652.)

¶ . . . ¶

[T]he Regional Center’s reliance on a fixed policy is inconsistent with the Act’s stated purpose of providing services “sufficiently complete to meet the needs of each person with developmental disabilities.” (§ 4501.) The Act clearly contemplates that the services to be provided each consumer will be selected “on an individual basis.” (*Association for Retarded Citizens v. DDS of Developmental Services*, supra, 38 Cal.3d 384, 388.)

A primary purpose of the Act is “to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family.” (*Association for Retarded Citizens v. DDS of Developmental Services*, supra, 38 Cal.3d 384, 388.) In strong terms, the Act declares: “The Legislature

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<sup>13</sup> (1990) 226 Cal.App.3d 225.

places a high priority on providing opportunities for children with developmental disabilities to live with their families” requiring the state to “give a very high priority to the development and expansion of programs designed to assist families in caring for their children at home.” (§ 4685, subd. (a).) In language directly applicable to the present case, section 4685, subdivision (b), states that “regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child . . . .” (§ 4685, subd. (b).)

The Lanterman Act “grants the developmentally disabled person the right to be provided at state expense with only such services as are consistent with its purpose.” (Association for Retarded Citizens v. DDS of Developmental Services, supra, 38 Cal.3d 384, 393.) As noted previously, a primary purpose of the Act is to “minimize the institutionalization of developmentally disabled persons and their dislocation from family.”<sup>14</sup>

6. The Lanterman Act provides that, “[R]egional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home . . . .”<sup>15</sup>

7. The Lanterman Act, however, also requires regional centers to be cost conscious.

[I]t is the . . . intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and *reflect the cost-effective use of public resources.*<sup>16</sup> (Italics added.)

8. When selecting a provider of consumer services and supports, regional center, the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative shall consider, “the cost of providing services or supports of comparable quality by different providers, if available.”<sup>17</sup>

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<sup>14</sup> *Id.* at pp. 232-233.

<sup>15</sup> Welf. & Inst. Code, § 4685, subd. (b)(1).

<sup>16</sup> *Id.* at §§ 4646, subd. (a).

<sup>17</sup> *Id.* at § 4648, subd. (a)(6)(D).

9. The Lanterman Act requires regional centers to do a number of things to conserve state resources. For example, it requires regional centers to “recognize and build on . . . existing community resources.”<sup>18</sup>

10. With certain exceptions, the Lanterman Act requires regional centers to:

Identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following: (1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income, and the state supplementary program. (2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.<sup>19</sup>

11. The Lanterman Act prohibits the use of regional center funds to pay for services another agency is obligated to provide. The act states:

Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.<sup>20</sup>

12. None of these provisions concerning cost-effectiveness detracts from the fact that eligible consumers are entitled to the services and supports provided for in the Lanterman Act. These provisions concerning cost-effectiveness do teach us, however, that cost-effectiveness is an appropriate concern in choosing how services and supports will be provided.

## LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 1 through 25, it is determined that claimant is entitled to a stair rail lift. Claimant needs a stair rail lift so that he can move from one area of his home to another. There may be a possibility that, in many months from

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<sup>18</sup> *Id.* at § 4685, subd. (b)(3).

<sup>19</sup> *Id.* at § 4659, subd. (a).

<sup>20</sup> *Id.* at § 4648, subd. (a)(8).


now, behavior modification training could obviate the need for a lift, but claimant needs a lift now. Moreover, there is no assurance that behavior modification training would work. He needs a lift so that he can come closer to approximating the life other people lead. He needs it so that he can live the most normal life possible. Regional centers are charged with a special responsibility to assist families in maintaining their children in their homes. It is true that \$3,000 is a substantial amount of money, but based on all the evidence, it is determined that the expenditure would be cost-effective.

2. A word is in order regarding Ms. S.'s rejection of behavior modification. Perhaps someone from the regional center could meet with Ms. S. a few times to help her understand more about behavior modification. A discussion might include the character, limitations, and potential benefits of behavior modification. It also might include techniques behaviorists use and the training they have. It may be that claimant will need behavior modification, and it would be a pity for him not to have it because Ms. S. was unsympathetic with the proposition that he might benefit from it.

#### ORDER

Claimant's appeal is granted. The regional center shall provide him with a stair rail lift.

DATED: May 20, 2011

  
ROBERT WALKER  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

**This is the final administrative decision in this matter. Each party is bound by this decision. If a party chooses to appeal, an appeal from this decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf.& Inst. Code, § 4712.5, subd. (a).)**